CHONG BOON PAU

v.

TIMBALAN MENTERI DALAM NEGERI & ORS

HIGH COURT, JOHOR BAHRU
KP GENGADHARAN NAIR JC
[CRIMINAL APPLICATION NO: 44-26-2004]
22 SEPTEMBER 2004

CRIMINAL PROCEDURE: *Habeas corpus - Detention of child - Failure to consider provisions of Child Act 2001 - Whether detention procedurally flawed*

PREVENTIVE DETENTION: *Detention order - Detention under Emergency (Public Order and Prevention of Crime) Ordinance 1969 - Child detainee - Provisions of Child Act 2001 not considered - Minister failing to consider whether detention under Ordinance to be preferred to detention under Child Act 2001 - Whether detention procedurally flawed*

PREVENTIVE DETENTION: *Detention order - Grounds for detention - Not all grounds for detention stated in detention order - Whether detention procedurally flawed - Whether could be cured by subsequently informing detenu of grounds not stated earlier*

The applicant was detained pursuant to a detention order under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'). He applied for a writ of *habeas corpus*. He relied on two main grounds in his application. The first ground concerned the fact that the applicant was still a minor at the time of the alleged offensive acts complained of, as being facts leading to the grounds for his detention. He was still a minor when he was first detained by the police under s. 3 of the Ordinance. The applicant also alleged that the Deputy Minister had not given due consideration to the issue of whether the Ordinance should be used against a minor or a child as the applicant was at the material time. It was submitted on the applicant's behalf that his detention was not justified as the Deputy Minister had failed to consider the possibility of initiating a prosecution or action against the applicant under the Child Act 2001 in view of s. 83(1) of the Act. The second ground relied upon by the applicant was that the applicant could not make proper representations against the detention order as the detention order did not state that the applicant's detention was also based on the first limb of s. 4(1) of the Ordinance. The detention order served upon the applicant

had the first limb of s. 4(1) deleted leaving only the second limb of s. 4(1) intact. However, it was clear from the affidavit-in-reply of the Deputy Minister that the applicant was detained upon the Deputy Minister's satisfaction in respect of both limbs of s. 4(1).

Held (allowing the application):

[1] In view of the provisions of the Child Act 2001, the arrest and detention of the applicant by the police (under s. 3 of the Ordinance and the subsequent detention under s. 4(1) of the Ordinance as preventive detention without considering the application of the Child Act 2001) was procedurally flawed. The Deputy Minister ought to have applied his mind to the question whether the detention under the Ordinance was most necessary and was to be preferred to one under the Child Act 2001. In the absence of any indication in the affidavits of the respondents, it was doubtful whether the police or the Deputy Minister did in fact weigh the options of acting under the Child Act 2001 or under the Ordinance in the instant case. (pp 847 g & 848 d)

[2] The failure to disclose in the detention order that the applicant's detention was necessary in respect of both limbs of s. 4(1) was a procedural flaw which made the detention unlawful. The failure to state all the grounds when serving the detention order could not be overcome by subsequently informing the detenu of the grounds not stated earlier. Even if the Deputy Minister had taken both limbs of s. 4(1) of the Ordinance into consideration to order the detention of the applicant, but only one limb was stated to be the ground of detention at the time the detention order was served upon the applicant, it would still offend s. 4(4)(a) of the Ordinance. (pp 850 h & 851 e-f)

[Applicant set free.]

Case(s) referred to:

Kumareshan Subramaniam v. Dato' Chor Chee Heng (Criminal Application No: 44-04-003) (Unreported)

Menteri Hal Ehwal Dalam Negeri v. Lee Gee Lam [1993] 4 CLJ 336 SC

Murugan Palanisamy v. Deputy Minister of Home Affairs [2000] 1 CLJ 147 HC

Superintendent of Pulau Jerejak & Anor v. Wong Cheng Ho [1979] 1 LNS 104

Legislation referred to:

Child Act 2001, ss. 75(1), 83(1)

Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3, 4(1), (4)(a), 5(2)(b)(i)

Federal Constitution, art. 151

For the applicant - RR Mahendran; M/s RR Mahendran & Co
For the respondents - Najib Zakaria SFC

Reported by Andrew Christopher Simon

JUDGMENT

KP Gengadharan Nair JC:

This was an application for a writ of *habeas corpus* by Chong Boon Pau (hereinafter called "the applicant") for his release from detention in Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim.

The Detention Order And Allegations

The applicant was detained pursuant to a detention order dated 10 February 2004 made under s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (hereinafter referred to as 'the Ordinance'). The detention order reads as follows:

OD (KAMJ) 1B

ORDINAN DARURAT (KETENTERAMAN AWAM DAN MENCEGAH JENAYAH) 1969

PERINTAH TAHANAN
[Seksyen 4(1)]

Kepada:

Pegawai Yang Menjaga Pusat Pemulihan Akhlak, Simpang Rengam, Johor;
Ketua Polis Negara, Malaysia;
Semua Pegawai Polis Diraja Malaysia yang berkenaan.

BAHAWASANYA saya, berpuashati yang Perintah Tahanan adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan:

(a) ~~mencegah daripada melakukan perbuatan jenayah yang melibatkan kekerasan~~*

(b) menghapuskan kekerasan*

(c) mencegah jenayah melibatkan kekerasan*

Nama	Nombor Kad Pengenalan
CHONG BOON PAU	851218-10-5629

MAKA, OLEH YANG DEMIKIAN, pada menjalankan kuasa yang diberi di bawah Seksyen 4(1), Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969, saya dengan ini memerintahkan supaya orang

yang namanya yang tersebut di atas ditahan selama dua (2) tahun mulai dari 10 haribulan Februari 2004 di Pusat Pemulihan Akhlak, Simpang Rengam, Johor atau di mana-mana tempat lain sebagaimana yang diarah dari semasa ke semasa.

Diperbuat pada 10 haribulan Februari, 2004.

t.t.
(DATO' CHOR CHEE HEUNG)
TIMBALAN MENTERI DALAM NEGERI
MALAYSIA

[KAMJ 15138]

* Potong yang tidak berkenaan.

When the detention order was served on the applicant he was also served with a copy of the document setting out the reasons for his detention as s. 4 of the Ordinance, *inter alia*, requires that when a person "is detained under a detention order he shall, in accordance with art. 151 of the Constitution, as soon as may be" be informed of the grounds for the detention.

Reproduced below is the document setting out the grounds for the applicant's detention:

ORDINAN DARURAT
(KETENTERAMAN AWAM DAN MENCEGAH JENAYAH)
5/69

NAMA ORANG TAHANAN : CHONG BOON PAU

NO. KAD PENGENALAN: 851218-10-5629

ALASAN-ALASAN YANG ATASNYA DIPERINTAH ITU DIBUAT

Kamu adalah merupakan salah seorang ahli kumpulan Gang 18 Immortals yang bergerak aktif di sekitar kawasan Kapar, Klang, Selangor serta melibatkan diri di dalam jenayah kekerasan.

PENGATAAN-PENGATAAN FAKTA YANG ATASNYA PERINTAH ITU DIASASKAN

Bahawa kamu merupakan salah seorang ahli kumpulan Gang 18 Immortals yang bergerak aktif di sekitar kawasan Kapar, Klang, Selangor dan terlibat dalam jenayah kekerasan. Antara kegiatan jenayah yang telah kamu lakukan ialah:

1. Bahawa kamu pada 26.10.2003, jam lebih kurang 3.00 petang di tempat letak kereta Pasaraya Jaya Jusco, Klang, Selangor, bersama-sama dengan dua (2) orang rakan sejenayah telah menculik empat (4) lelaki Cina dan dua (2) perempuan Cina Pengawal Peribadi penyanyi Emil Chow dan bawa mereka ke sebuah tokong Cina di Jalan Meru, Klang dan telah memaksa mangsa membuka baju dan memukul, menampar muka mangsa dengan tangan di tokong Cina tersebut.

2. Bahawa kamu pada 9.11.2003, jam lebih kurang 5.00 petang di Rock "D" Discotheque No. 2, 4, 6 dan 8, Jalan Permas 10/B, Bandar Baru Permas Jaya, Johor Bahru, Johor bersama dengan rakan sejenayah memukul seorang lelaki Cina yang bekerja sebagai Kapten di Disco tersebut dengan menggunakan bekas minuman, kayu dan batu bata. Akibat daripada pukulan tersebut mangsa telah mengalami cedera hidung, kepala dan lebam muka.

3. Bahawa kamu pada bulan November 2003, jam lebih kurang 8.30 malam di hadapan Restoran Tim Sum, Jalan Permas 10, Permas Jaya, Johor bersama dengan beberapa rakan sejenayah dengan bersenjata rotan dan besi dengan niat hendak bertempur dengan Gang JI IT HAI semasa mengadakan table talk.

4. Bahawa kamu pada 13.11.2003, jam lebih kurang 5.00 petang, di SPA Tingkat 7, Hotel Gold Course, Klang, Selangor bersama-sama dengan seorang rakan sejenayah telah merusuh kerana tidak berpuashati diatas layanan yang diberikan oleh taukey hotel (SPA) tersebut.

5. Bahawa kamu pada 13.11.2003, jam lebih kurang 10.35 malam, di Kedai Kopi Heng Leng Food Court, Taman Megar Ria, Masai Johor bersama-sama dengan rakan sejenayah telah menculik seorang lelaki Cina dari kumpulan JI IT HAI. Mangsa telah dimaki, dipukul dengan tangan dan kaki kerana hendak membalas dendam terhadap ketua kumpulan tersebut dan mangsa telah dibebaskan setelah mangsa bukan dari kumpulan JI IT HAL

6. Bahawa kamu pada 28.10.2003, jam lebih kurang 10.30 malam, di Bintang Palace Night Club, Kuala Lumpur bersama-sama seorang rakan sejenayah telah mengadakan table talk serta telah menunjukkan sepucuk pistol dengan meletakkan di atas meja dengan tujuan untuk menunjukan kuasa kumpulannya.

Dengan Arahan
Timbalan Menteri Dalam Negeri

t.t.
(NAZREE BIN MOHAMAD)
Penolong Setiausaha
Kementerian Dalam Negeri.

Tarikh: 10 Februari, 2004

(Ruj. KAMJ – 15138).

Applicant A Child

The applicant was under the age of eighteen years at all the material times of the alleged commission of the acts stated as being the "facts" leading to the grounds for his detention. He was still a minor at the time of his arrest and detention by the police under s. 3 of the Ordinance on 8 December 2003 ie, before the Deputy Minister issued the detention order on 10 February 2004 by which date the applicant was eighteen years, one month and 23 days old.

In the affidavit in support of the application (encl. 3) the applicant whilst arguing that the Deputy Minister acted in a mechanical fashion by automatically and arbitrarily issuing the detention order under s. 4(1) of the Ordinance proceeded to raise another ground that the Deputy Minister failed to take into account the fact that the applicant was a minor at the time of the alleged offensive acts complained of as being the facts leading to the grounds for his detention. It was further argued that the Deputy Minister had not given due consideration to the issue of whether the Ordinance should be used against a minor or a "child" as the applicant was at the time of the alleged acts which formed the basis for his detention under the Ordinance. A "child" is defined in the Child Act 2001 (hereinafter referred to as "the Child Act") as:

> child:
>
> (a) means a person under the age of eighteen years; and
>
> (b) in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code (Act 574).

The Deputy Minister in his affidavit in reply (encl. 7) did not directly reply to the point raised by the applicant about he (the applicant) being a minor at the material time of the alleged 'facts' being the grounds for the detention order to be issued. However, in the affidavit (in para. 6) the Deputy Minister, *inter alia*, stated as follows:

> Daripada laporan lengkap penyiasatan yang berkaitan dengan aktiviti Pemohon yang telah saya terima mengenai tangkapan dan penahanan Pemohon, saya telah berpuashati bahawa Pemohon adalah merupakan salah seorang ahli kumpulan Gang 18 Immortals yang bergerak aktif di sekitar kawasan Kapar, Selangor serta melibatkan diri di dalam jenayah kekerasan dan adalah perlu bagi ketenteraman awam supaya Pemohon ditahan bagi menghapuskan kekerasan dan mencegah jenayah melibatkan kekerasan. Seterusnya saya telah membuat satu Perintah Tahanan di bawah Seksyen 4(1) Ordinan Darurat (Ketenteraman dan Mencegah Jenayah), 1969 bertarikh 10.2.2004 yang mengarahkan supaya Pemohon ditahan bagi tempoh 2 tahun mulai dari 10.2.2004.

He further stated, generally, that:

> Saya sesungguhnya dengan suci hati percaya bahawa Perintah Tahanan yang dikeluarkan oleh saya terhadap Pemohon adalah sah dan betul disisi undang-undang dan termasuk di dalam skop Ordinan tersebut. Saya juga sesungguhnya percaya bahawa Ordinan tersebut adalah terpakai dalam fakta-fakta yang dibuat ke atas Pemohon.

Section 3(1) of the Ordinance provides that:

> Any police officer may without warrant arrest and detain pending enquiries any person in respect of whom he has reason to believe that there are grounds which would justify his detention under section 4(1).

and s. 4(1) of the Ordinance reads as follows:

> If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a "detention order") directing that that person be detained for any period not exceeding two years.

It was submitted on behalf of the applicant that the detention of the applicant was not justified as the Deputy Minister had failed to consider the possibility of initiating a prosecution or action against the applicant under the Child Act in view of the provision in s. 83(1) of this Act.

Section 83(1) of the Child Act states as follows:

> Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence but subject to subsections (3) and (4), a child who is alleged to have committed an offence shall not be arrested, detained or tried except in accordance with this Act.

It was further submitted that as the Deputy Minister did not, in his affidavit in reply to this application, refer to any such consideration this court could draw an inference that there was no application of the mind to the vital question whether it was necessary to detain the applicant under the Ordinance rather than pursue a prosecution under the provisions of the Child Act. As stated earlier, the applicant was a child at the time of his arrest and detention by the police.

In the case of *Superintendent of Pulau Jerejak & Anor. v. Wong Cheng Ho* [1979] 1 LNS 104 the Federal Court in a majority judgment was of the view that a juvenile (under the Juvenile Courts Act 1947) could be detained without a trial under s. 4(1) of the Ordinance or only in accordance with the Juvenile Courts Act 1947.

> It is open to the Executive to proceed either under **the Act** or the Ordinance, depending on the circumstances of each case. To proceed under **the Act** the Executive must satisfy the Juvenile Court that the juvenile is in need of care and protection, ie, he has no parent or guardian or his parent or guardian is unfit to exercise care and guardianship or has not been exercising proper care and guardianship, and that accordingly the juvenile has either fallen into bad company or is exposed to moral danger or is beyond control.
>
> To proceed under the Ordinance the Minister does not have to satisfy any Court – at least in the first instance – as to anything; all he need do is to satisfy himself *bona fide* that it is necessary to detain the juvenile with a view to preventing him from acing in manner prejudicial to public order or because it is necessary for the suppression of violence or the prevention of crimes involving violence.
>
> The same set of facts may justify an order under the Act or the Ordinance – but not necessarily so.
>
> We think that the responsibility of acting under the Ordinance is graver than that of acting under the Act.

There is nothing stated in the affidavit filed on behalf of the respondents that the decision of the Deputy Minister to act under the Ordinance instead of proceeding under the Child Act was proper and justified in view of the 'circumstances of the case'.

It is to be noted that in the aforesaid case of *Pulau Jerejak & Anor v. Wong Cheng Ho (supra)* the Supreme Court went on to state that because of the use of the words 'any person' in s. 4(1) of the Ordinance (without any qualification as to age) a juvenile could be detained either under the Juvenile Courts Act or under the Ordinance.

The Juvenile Courts Act was already in existence at the time of the promulgation of the Ordinance. Despite this, the Ordinance in ss. 3 & 4, referred to the arrest and detention of 'any person' which was interpreted by the then Supreme Court as being wide enough in scope to include a minor or child. However, in my humble view, the situation changed when the Child Act was enacted without providing any exception or qualification in the case of a "child" in relation to the provision in the Ordinance in respect of the reference to 'any person' in s. 3 and s. 4 of the Ordinance.

The Child Act does not provide any limitation that the provisions of the Child Act are subordinate to any existing laws in the matter of arrest and detention of a child like the applicant. On the contrary s. 83(1) of the Child Act specifically provides that 'notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence a child who is alleged to committed an offence shall not be arrested, detained or tried except in accordance' with the Child Act. The preamble to the Child Act states as follows:

> An Act to consolidate and amend the laws relating to the care, protection and rehabilitation of children and to provide for matters connected therewith and incidental thereto.

Further, the purpose of the Child Act is stated, *inter alia*, in the following terms:

> RECOGNIZING that a child is not only a crucial component if such a society but also the key to its survival, development and prosperity:
>
> ACKNOWLEDGING that a child, by reason of his physical, mental and emotional immaturity, is in need of special of special safeguards, care and assistance, afterbirth, to enable him to participate in and contribute positively towards the attainment of the ideals of a civil Malaysian society:
>
> RECOGNIZING every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status;
>
> ACKNOWLEDGING the family as the fundamental group in society which provides the natural environment for the growth, support and well-being of all its members, particularly children, so that they may develop in an environment of peace, happiness, love and understanding in order to attain the full confidence, dignity and worth of the human person.

The affidavit filed on behalf of respondent does not state why the applicant who is now about 18 1/2 years old should not be sent for rehabilitation to the "Henry Gurney School" as the Child Act has specific and comprehensive provisions for children who have committed serious crimes to be sent for rehabilitation.

Section 75(1) of the Child Act contains the following provisions:

> If:
>
> (a) a child is found guilty of any offence punishable with imprisonment:
>
> (b) the probation report submitted to the Court For Children shows that:
>
> (i) the parents or guardian of the child can no longer exercise or is incapable of exercising any proper control over him;
>
> (ii) the child is habitually in the company of persons of bad character; and
>
> (iii) the child is not suitable to be rehabilitated in an approved school; and
>
> (c) it appears to the Court For Children:
>
> (i) that the offence committed is serious in nature; and
>
> (ii) by reason of the nature of the child's criminal habits and tendencies it is expedient that the child be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime.
>
> the Court For children shall, on the recommendation of the probation officer, send the child to a Henry Gurney School.

In view of the provisions the of Child Act, the arrest and detention of the applicant by the police under s. 3 of the Ordinance and the subsequent detention under s. 4(1) of the Ordinance as a preventive detention without considering the application of the Child Act is, to my mind, proceduraly flawed.

It is to be noted that all the 'facts' stated as forming the basis for the grounds of detention are allegations of acts which could be described as "offences" for which criminal charges could well have been framed against the applicant. This, considered in the light of the provisions of s. 83 of the Child Act, coupled with the fact that the Child Act was enacted when the Ordinance was already (and is still) in force, did, in my humble view, require the Minister to consider whether a detention under the Ordinance was more appropriate and

necessary than the application of the provisions of the Child Act against the applicant. This consideration was necessary before the Minister was could satisfy himself that the applicant should be detained under the Ordinance. The Minister has the power to detain any person (and that would include the applicant) under s. 4(1) of the Ordinance if he is satisfied that it is necessary. His "satisfaction" is subjective and not amenable to challenge. However, procedurally in a case such as that of the applicant who is covered by an Act like the Child Act which contains special protective provisions the Deputy Minister in this case ought to have, before he satisfied himself, taken into consideration the fact that the person being ordered to be detained required to be detained under the Ordinance and not be dealt with under the special and specific Child Act enacted solely to deal with a particular and/or distinct class of persons ie, children. Thus, in this case the deputy Minister ought to have applied his mind to the question whether the detention under the Ordinance is most necessary and had to be preferred over being dealt with under the Child Act. The affidavit of the Deputy Minister did not state whether the Minister undertook such a consideration before ordering the detention of the applicant.

In *Murugan s/o Palanisamy v. Deputy Minister of Home Affairs* [2000] 1 CLJ 147 Zulkifli J, expressed a view in this regard as follows:

> I am of the view that the ordinary criminal process is not to be circumvented or short circuited by ready resort to preventive detention. It is accepted that in some cases it may not be possible to bring the offender to book on account that witnesses do not come forward to depose against him out of fear or it may not be possible to collect all the necessary evidence without unreasonable delay and expenditure to prove the guilt of the offender beyond reasonable doubt. However, the failure of the detaining authority to consider and state the possibility of launching a criminal prosecution may, in the circumstances of the case lead to a conclusion that the detaining authority had not applied his mind to the vital whether is was necessary to make such an order when an ordinary criminal prosecution could well serve the purpose. I am of the view that if the detaining authority fails to satisfy the court that the detaining authority so bore the said question in mind, the court would be justified in drawing the inference that there was no application of the mind of the detaining authority to the vital question whether it was necessary to preventively detain the detenu. I find support of this argument by reference to the case of *Hemlata v. State of Maharashtra* AIR [1982] SC8 wherein in that case it was held, *inter alia*, that the aspect relating to possibility of criminal prosecution must also be borne in mind while ordering detention. I would also venture to state in the circumstances of this case and bearing in mind there is only one allegation of fact relating to the one offence alleged to have committed by the applicant could lead to inference that there was *mala fide* on the part of the detaining authority in ordering the detention of the applicant.

In the absence of any indication in the affidavit of the respondents to the contrary there is a doubt whether the police and/or the Deputy Minister did infact weigh the options of acting under the Child Act or under the Ordinance in the circumstances of this applicant's case. The benefit of this doubt weighs in favour of the applicant ie, that they did not so consider the options.

In the circumstances I held that the detention of the applicant was proceduraly flawed on this ground and hence his detention was improper and unlawful. Consequently, he was entitled to be released on a writ of *habeas corpus*.

Further Ground For Release

However, even if I am wrong in the above as being a ground for the granting of the writ there was yet another ground (referred to below) raised by the applicant for his release. I was of the humble view that the applicant was also entitled on that ground, too, for the writ to be issued.

Grounds For The Detention Under s. 4(1) Of The Ordinance

The further ground for the application for the writ of *habeas corpus* was that the applicant could not make proper representations against the detention order to the Advisory Board as the Deputy Minister's detention order did not state that the applicant's detention was also based on the first limb of s. 4(1) of the Ordinance ie, that part that reads as:

> If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained.

The detention order (which I have set out in full above) served on the applicant upon his detention had the above part deleted ie, the first limb of s. 4(1) of the Ordinance was deleted leaving only the second limb of s. 4(1) of the Ordinance intact and as being the reason for the applicant's detention and which reads as:

> ... that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained.

However, in para. 6 of the affidavit in reply by the Deputy Minister (encl. 7) the Deputy Minister states as follows:

> Daripada laporan lengkap penyiasatan yang berkaitan dengan aktiviti Pemohon yang telah saya terima mengenai tangkapan dan penahanan Pemohon, saya telah berpuashati bahawa Pemohon adalah merupakan salah seorang ahli kumpulan Gang 18 Immortals yang bergerak aktif di sekitar kawasan Kapar, Selangor serta melibatkan diri di dalam jenayah kekerasan dan adalah perlu bagi ketenteraman awam supaya Pemohon ditahan bagi menghapuskan kekerasan dan

> mencegah jenayah melibatkan kekerasan. Seterusnya saya telah membuat satu Perintah Tahanan di bawah Seksyen 4(1) Ordinan Darurat (Ketenteraman Dan Mencegah Jenayah), 1969 bertarikh 10.2.2004 yang mengarahkan supaya Pemohon ditahan bagi tempoh 2 tahun mulai dari 10.2.2004.

It is clear from the above paragraph that the applicant was detained upon the Deputy Minister's satisfaction in respect of both limbs of s. 4(1) of the Ordinance. However, the applicant was only informed, upon his detention, of the second limb only as being the ground for his detention. Sections 4(4)(a) and 5(2)(b)(i) of the Ordinance quite clearly provides that at the time of the service of the detention order upon a person he must be informed of the grounds of the detention.

Section 4(4)(a) of the Ordinance states that:

> Whenever any person is detained under a detention order he shall, in accordance with Article 151 of the Constitution, as soon as may be:
>
> (a) be informed of the grounds of this detention.

and s. 5 of the Ordinance reads as:

> (1) A copy of every detention order shall as soon as may be after the making thereof be served on the person to whom it relates and every such person shall be entitled to make representations against the order to an Advisory Board;
>
> (2) For the purpose of enabling a person to make representations under sub-section (1) he shall at the time of the service on him of the order:
>
> (b) Be furnished by the Minister with a statement in writing:
>
> (iii) of such other particulars if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

It was argued on behalf of the applicant that he had been seriously prejudiced whilst making his representations against the detention order to the Advisory Board as he was then not aware of the first limb of s. 4(1) of the Ordinance as also being a ground for his detention ie, that it was necessary for public order that he be detained.

It is my view that the failure to disclose, in the detention order, that the applicant's detention was necessary in respect of both limbs of s. 4(1) of the Ordinance but instead only expressly referring to one limb only was proceduraly fatal and hence made the detention unlawful. The failure to state all the grounds when serving the detention order cannot be overcome by

subsequently informing the detenu of the grounds not stated earlier. See *Kumareshan a/l Subramaniam v Dato' Chor Chee Heng* (Muar High Court Criminal Application No.: 44-04-003).

In *Menteri Hal Ehwal Dalam Negeri v. Lee Gee Lam* [1993] 4 CLJ 336, the then Supreme Court had this to say in respect of the necessity for a clear indication of the limbs under which a detention order under s. 4(1) of the Ordinance is made:

> We would conclude by saying that in determining the propriety or legality of a detention order made under s. 4(1) the satisfaction of the Minister has to be considered in the light of the limbs under which he acted. The determination of the question as to whether he addressed his mind to the relevant limb or for that matter to both the limbs in making his detention order is a procedural matter and if it is shown that there is some doubt as to which particular limb the Minister applied his mind to or whether he applied his mind to both the limbs together in grounding his order, the benefit of the doubt must be given to the detenu.

Similarly, in the present case, too, the benefit of the doubt whether the Deputy Minister considered only one limb (as in the detention order) or both limbs (as in the affidavit filed by the Deputy Minister) must be given to the applicant. To compound matters further this had a consequential effect on and affected the applicant's representations to the Advisory Board under the Ordinance. Still further, if the Deputy Minister had taken both limbs (grounds) of s. 4(1) of the Ordinance into consideration to order the detention of the applicant but only one limb (ground) was stated (to the applicant) as being the ground for the detention at the time the detention order was served on the applicant it offended s. 4(4)(a) of the Ordinance which required that "whenever any person is detained under a detention order he shall, in accordance with art. 151 of the Constitution as soon as maybe be informed of the grounds of this detention".

On this aforesaid ground, too, the applicant's detention was unlawful as it contravened the procedural requirement of the Ordinance. Consequently, on this ground, too, I granted the applicant's application and ordered that he be set free forthwith.